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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,184	11/12/2003	Dennis J. Sammut	SAMMUT-07597	6125
7590	05/04/2006			EXAMINER CLEMENT, MICHELLE RENEE
David A. Casimir MEDLEN & CARROLL, LLP Suite 350 101 Howard Street San Francisco, CA 94105			ART UNIT 3641	PAPER NUMBER
DATE MAILED: 05/04/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/706,184	SAMMUT ET AL.
	Examiner Michelle (Shelley) Clement	Art Unit 3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 February 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 45-83 is/are pending in the application.
- 4a) Of the above claim(s) 48,49,55-72 and 81-83 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 45-47, 50-54, 73-80 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

1. Claims 48, 49, 55-72, and 81-83 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/21/05 and 2/17/06.

### ***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 45-47, 50-54, and 73-80 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 45 recites the limitation "said primary vertical cross-hair" in line 9. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 74 recites the limitation "said primary horizontal cross-hair". There is insufficient antecedent basis for this limitation in the claim.

7. Claim 77 recites the limitation "the opposite end". There is insufficient antecedent basis for this limitation in the claim.

8. The term "the opposite end" in claim 77 is a relative term which renders the claim indefinite. The term "the opposite end" is a spatially relative term that is not defined by the

claim, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 45, 46, 50, 51, 53, 73, and 75-80 are rejected under 35 U.S.C. 102(b) as being anticipated by Reed (US Patent # 4,695,161). Reed discloses a ballistics calculator system for computing targeting information to hit a target, comprising a processor, the processor comprising a ballistics computer program for analyzing information to accurately aim a firearm at a target using a target acquisition device with a reticle, the program using information regarding the target acquisition device and reticle being used, wherein the type of target acquisition device and reticle comprise, a reticle comprising a plurality of secondary horizontal cross-hairs at predetermined distances along a primary vertical cross-hair and a plurality of secondary vertical cross-hairs at predetermined distances along at least some of the secondary horizontal cross-hairs and an output using the secondary horizontal cross-hairs and secondary vertical cross-hairs to identify an aiming point for hitting the target. The reticle comprises a primary vertical and horizontal cross-hair. At least some of the secondary horizontal and vertical cross-hairs are evenly spaced and are connected to form a grid. Information regarding the target acquisition device and reticle being used can include the positional relationship between the target acquisition device and the firearm. The device further comprises a housing, means for mounting

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the housing in a fixed predetermined position relative to a firearm. The target acquisition device further comprises an objective lens mounted in one end of the housing and an ocular lens mounted in an opposite end. The target acquisition device further comprises a projected image and is configured to display information on a display screen, wherein the information displayed is an image of a reticle.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 47, 52 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed as applied to claims 45 and 46 above, and further in view of Wascher et al. (US Patent # 5,491,546). Although Reed does not expressly disclose the primary vertical and horizontal cross-hairs intersecting at the optical center of the reticle, at least some of the secondary horizontal and vertical cross-hairs having identifying marks, and the reticle including range finding markings on the reticle, Wascher et al. does. Wascher et al. teaches a target acquisition device and reticle, wherein the reticle comprises primary vertical and horizontal cross-hairs that intersect at an optical center of the reticle and wherein at least some of the secondary horizontal and vertical cross-hairs have identifying marks, the reticle further including range finding marks on the reticle. Wascher et al. and Reed are analogous art because they are from the same field of endeavor: target acquisition devices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the position of the reticle and identifying

marks as taught by Wascher et al. with the device as taught by Reed. The suggestion/motivation for doing so would have been to obtain a sighting system that included the range determining features for more accurate aiming as suggested by Wascher et al.

13. Claim 74 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed as applied to claim 45 above, and further in view of Cohen (US Patent # 5,375,072). Although Reed does not expressly disclose that the device comprises an elevation knob and the system providing an output of how much the knob should be turned to adjust a position of the target acquisition device relative to the firearm, Cohen does. Cohen teaches the processor and the target acquisition device being separate units wherein the processor provides an output informing the user how much a windage knob must be turned to adjust a position of the target acquisition device so that an intersection of the primary vertical cross-section and the primary horizontal cross-hair can be used as the aiming point. Cohen and Reed are analogous art because they are from the same field of endeavor: target acquisition devices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the separation of components as taught by Cohen with the device as taught by Reed, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art and Cohen specifically teaches the components separately.

### *Conclusion*

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Binion (US Patent # 4,561,204), Critchett (US Patent # 1,190,121), Edwards (US Patent # 6,813,025), Barrett (US Patent # 6,862,832), and Bell et al. (US Patent # 6,886,287).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MICHELLE CLEMENT  
PRIMARY EXAMINER